

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 195496

Oakland Circuit

ALFRED DWAYNE MILLER,

LC No. 94-135377-FH

Defendant-Appellee.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 196875

Oakland Circuit

ALFRED DWAYNE MILLER,

LC No. 94-135377-FH

Defendant-Appellant.

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Before: Jansen, P.J., and Doctoroff and Gage, JJ.

GAGE, J. (concurring in part and dissent in part)

I must respectfully dissent from that portion of the majority opinion that remands for resentencing in Docket No. 195496.

In reviewing the lower court record, I cannot conclude that the trial court abused its discretion in sentencing this defendant. Defendant was 37 years old at the time of the incident and had no prior felony convictions. He had a high school diploma with some college and additional training. Defendant had worked as a driver/courier for a hospital for twelve years until he became physically disabled as a result of being shot during a robbery. “[A] person who has advanced to middle age with a clean slate and a solid career may also present a compelling

case for deviation, as someone with a proven capacity to

live within the bounds society has set.” *People v Fields*, 448 Mich 58, 78; 528 NW2d 176 (1995). Although the trial court may have considered at least one inappropriate factor, this case presents a different set of facts than *Fields*, in which the Supreme Court remanded for resentencing because the Court found it “unclear whether the trial judge in this case would have found substantial and compelling reasons to deviate from the statutory minimum solely on the basis of objective and verifiable factors.” *Id.* at 80. In the present case, the trial court considered mostly objective and verifiable criteria, indicated that it had read all of the material submitted to the court, and clearly found “substantial and compelling reasons to deviate.”<sup>1</sup> Under these circumstances, I prefer to defer to the trial judge’s exercise of discretion in sentencing this defendant.

/s/ Hilda R. Gage

<sup>1</sup> I note separately that although the trial court mentioned the codefendant’s sentence, which is an inappropriate consideration, *People v Clark*, 185 Mich App 127, 131; 460 NW2d 246 (1990), the court indicated that it understood the prosecutor was appealing the codefendant’s sentence and did not appear to take this factor into account.